

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CRIMINAL NO. 3:08cr109-DCB-JCS

WARREN CLIFTON PIERCE

DEFENDANT

ORDER

This cause is before the Court on Petitioner's Motion to Vacate under 28 U.S.C. § 2255. Having carefully considered the Motion, the Government's response thereto, the affidavit filed by Petitioner's trial counsel, applicable statutory and case law, and being otherwise fully advised in the premises, the Court denies Petitioner's Motion because it is procedurally barred.

As explained by the Government, Petitioner's Motion is procedurally barred for two reasons. First, his Motion is untimely because it was filed on May 22, 2012, more than one year and ninety days after January 18, 2011, the day the Fifth Circuit denied his appeal (which was not appealed to the United States Supreme Court). See Clay v. United States, 537 U.S. 522, 531 (2003). Second, the Petitioner waived his right to file the present Motion in his plea agreement. Yet, the Petitioner has not attempted to overcome this waiver by arguing that he entered into it unknowingly or involuntarily. United States v. White, 307 F.3d 336, 343 (5th Cir. 2002). Specifically, the Petitioner has not alleged (and nothing in the Petition suggests) that his counsel's assistance "directly affected the validity of that waiver or the plea itself." Id.

Because the Petitioner's claims are procedurally barred, the Motion is **DENIED** and his claims will be dismissed. Moreover, a certificate of appealability ("COA") is **DENIED** because it not debatable whether this procedural ruling is correct. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED, this the 14th day of May, 2013.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE